



The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



Development of a Strategy for Building the Resilience of Pastoral Communities to Climate Change in Two Ecosystems of Sudan Project (PSAP)

Workshop on: Regional and International treaties on conservation and sustainable use of renewable natural resources between Practices and Adoption.

Assessment of the implementation of International Environment and Natural Resources' related Instruments

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Background

Strengthening the application of international and regional environment and natural resources' related legal instruments is one of the main goals of Agenda 21, the global plan of action for environment and development adopted at the 1992 Earth Summit in Rio de Janeiro. The incorporation of such instrument into the domestic laws has been emphasized in Principles 11 and 13 of the said Declaration, as a necessity for the delivery of the benefits of sustainable development.

This paper addresses the adequacy of legislative, institutional and administrative actions in incorporating and effectively adhering to international and regional environment and natural resources' related legal instruments. A review of the modes of receiving international instruments in the domestic legal regime for environment and natural resources will be followed by an inventory of the basic obligations in major international and regional environment and natural resources' related legal instruments to which Sudan is a party. Then the adequacy of adherence to the same will be assessed in light of the basic laws and institutions, environmental hazards, sector regulations and mechanisms for effective enforcement thereof. The paper seeks to identify the opportunities and constraints and, thereupon, propose the appropriate solutions for the required reforms in the legal regime for environment and natural resources.

1- Adoption of International Environmental Rules in National Systems:

International agreements in the fields of environment and natural resources do not, usually, establish the specific means to be used by countries parties to achieve implementation. They, usually, only specify obligations of result. Where an international instrument is silent on a particular means of implementation or a specific measure to be taken, a State may choose any appropriate and effective means to achieve the international goal, pursuant to national constitutional requirements or customs.

1-1 There are two basic legal approaches for achieving environmental protection:

- a) Agreements or laws aimed at a single environmental milieu such as air or water; and
- b) Agreements or laws aimed at integrated pollution prevention and control.

An example of an obligation of result is Art. 192 of the UN Convention on the Law of the Sea (UNCLOS) which reads: States have the obligation to protect and preserve the marine environment. However Art. 210 of UNCLOS provides a typical example of an obligation of means: 1- States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment by dumping. 3- Such laws, regulations and measures shall ensure that dumping is not carried out without permission of the competent authorities of States.

Elements of integrated pollution protection and control are threefold: a) focus on each polluting substance, b) the origin of each polluting substance and c) the geographic target of each polluting substance.

1-2 Regulatory measures contained in some international environmental instruments include standard setting and restrictions and prohibitions. Pollution standards are prescriptive norms that govern production processes or set actual limits on the amount of pollutants or emissions produced. They consist of standards relating to process, products, emissions, quality and best environment practice/best available technology.

As a general rule, emission standards are used to control pollution from fixed installations. Product standards, on the other hand are used most frequently to regulate pollution from mobile sources.

The categories of restrictions and prohibitions commonly used in environmental regulations include: a) limits or bans, b) taking and trade measures, and c) land use regulation.

1-3 Environment Impact Assessment (EIA) is a procedure which seeks to ensure that adequate and early information is obtained on likely environmental consequences of development projects, on possible alternatives, and on measures to mitigate harm. EIA serve several purposes: a) they inform decision makers of the environment consequences of their decisions, b) they provide information and the possibility of participation for the interested public, c) they serve to integrate environment matters into other spheres of decision making and d) they form part of the State's obligation not to knowingly cause Transboundary environment harm. Principle 17 of the Rio Declaration extends the rule of prior assessment of potentially harmful activities to include those activities which have impacts solely within a State: (Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to decision of a national competent authority)

1-4 One of the most widely used techniques to prevent environmental harm is government authorization through permits, certification or licensing. The licensing and permit technique is directed to either to control pollution or use of natural resources.

Typically government agencies make a determination of activities or establishments to be considered environmentally hazardous. These are often formally listed and undertaking the activities is made subject to licensing or permitting procedures.

The use of temporary licenses for the siting of installations is considered to be a more flexible alternate to zoning procedure, which can involve complex land use restrictions and which can be cumbersome to change.

Taking permits are used to regulate the numbers and types of plants and animals which may be removed from the wild.

Applications for license/permit usually require a description of the planned activity, often an impact assessment or study of risks and as relevant, a description of the envisaged anti-pollution or anti-nuisance measures.

2- Main International Environment and Natural Resources' related Instruments

The Higher Council for the Environment and Natural Resources (HCENR), the basic interdepartmental policy coordinating body, also represents focal point to most of the International and Regional Environment and Natural Resources' related Instruments. The main obligations and position of implementation has been summarized by a report of HCENR as follows:

2-1 UN Framework Convention on Climate Change, 1992 and Kyoto Protocol 2005:

The main objective is to maintain a minimum level of concentration in the atmosphere of certain gases, in order to mitigate climate changes which will lead to impeding sustainable development and cause food shortage .Sudan has signed the Convention in Rio in 1992 and implemented it in 1993. HCENR as focal points liaisons with national line ministries including Oil, Electricity and Dams, Industry,

Agriculture and Irrigation, Science and Technology, External Relations and Health ministries, as well as academic and research institutions and civil society organizations.

Sudan's endeavors to implement its obligations include studies and research, planning and capacity building. A national Strategic Plan on Climate Change has been adopted and jointly implemented with the States.

2-2 Vienna Convention for the Protection of the Ozone Layer,1985 and Montreal Protocol on Substances that deplete the Ozone layer,1987:

The objective is the protection of human and environment health against adverse effects of the depletion of the ozone layer. The Convention entered into force in 1988 and Sudan acceded in 1993. The Protocol on the other hand, determined the year 1999 as ultimatum for the obligation of third world countries parties to implement the timeline for disposition with the ozone layer depleting substances. Technology and information exchange is made available to the parties. Montreal Multiparty Fund has been established with the objective of assisting developing countries in covering the costs of adherence to the Protocol as well as providing the appropriate alternative technologies to each country in accordance with projects submitted within the parties programs for funding. Sudan implemented the Protocol in 1993.

The relevant national ministries coordinating through HCENR include Oil, Industry, Electricity and Dams, Science and Technology, Agriculture and Irrigation, Finance(Customs), External Relations and Health ministries, as well as academic and research institutions, business associations and civil society organizations.

Sudan has fulfilled its obligations regarding the disposition with the ozone layer depleting substances. Regular reporting is made in due course.

2-3 UN Convention on Biological Diversity, 1992:

The threefold objective of the convention is the conservation of biological diversity and genetic resources, sustainable use of the components of biological diversity and the equitable sharing in produces emanating from the biological diversity and available genetic resources thereof. Sudan signed the Convention in Rio in 1992 and ratified the same in 1995.

The main obligation of the Convention is the adoption by each country party of a national strategy and action plan for the conservation and sustainable utilization of biological resources and control of its genetic resources. The mechanisms include zoning, establishment of protected reserves, and management of biological resources, rehabilitation of deteriorated eco-systems and protection of endangered species in addition to a holistic approach with the general policy in place.

The main advantages of the Convention is the recognition of sovereignty over biological and genetic resources as part of the intellectual property rights, in situ conservation and ownership of biological and genetic sources, recognition of the role and rights of indigenous communities in understanding and utilizing the benefits of indigenous knowledge, and the concern on biological safety.

Sudan has fulfilled its obligations and submits regular reports. A national strategy and action plan on biological diversity has been as well as a legal framework for biological safety have been adopted.

2-4 International Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification Particularly in Africa, 1992:

The Convention was the product of a pressure from the developing countries during Rio Conference, 1992, in response to which a negotiation governmental committee was convened to draft an international convention on combat of desertification. The same was signed in Paris in 1992 and Sudan acceded in 1995.

The main objective of the convention is to establish a long term strategy for the combat of desertification and mitigation of the consequences of drought particularly in drought stricken areas in Africa. Such strategy should concentrate on the promotion of soil productivity and rehabilitation thereof, water and land management for the achievement of sustainable development and the promotion of the quality of living conditions in indigenous communities. International cooperation and complimentary efforts are the mechanism for achieving these objectives.

The focal point is a unit within the Ministry of Agriculture and Irrigation named the DROUGHT and DESERTIFICATION COMBAT UNIT (DDCU). The National Program on Desertification has been adopted.

2-5 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973

The Convention aims at the protection of endangered species of animals and plants through a license and permits system in international trade. The annexes to the Convention set out the lists of endangered species and those which are likely to be so unless stringent rules of trade regulation are made. Sudan acceded to the Convention in 1982.

2-6 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, 1989:

The objective of the convention is to regulate the transboundary movement of hazardous wastes- not including nuclear waste. This takes place through a system of regulations of import and re-exports as well as illegal traffic in dangerous wastes. The Convention calls for international co-operation in capacity building. Furthermore, it calls for establishing a mechanism for exchange of information amongst the States parties, as well as regional capacity building centers on hazardous wastes disposal technology.

2-7 Pre- Stockholm Conventions to which Sudan is a party include:

- Convention Concerning the use of White Lead in Painting, Geneva, 1921
- Convention Relative to the Preservation of Fauna and Flora in their Natural State, London, 1933
- International Convention for the Protection of Birds, Paris, 1950
- International Convention on the Conservation of Flora, Rome. 1951

2-7 African Convention on the Conservation of Natural Resources, 1968:

The Convention encourages regional co-operation amongst African countries for the protection and development of water, soil, plants and animal resources for the existing and coming generations. This covers economic, scientific, food and other aspects. Sudan acceded to the convention in 1973.

3- Basic Environmental laws and Institutions:

3-1 Extracts from the Interim National Constitution, 2005:

National Economy

10 (1)The overarching aims of economic development shall be eradication of poverty, attainment of the Millennium Development Goals, guaranteeing the equitable distribution of wealth, redressing imbalances of income and achieving a decent standard of life for all citizens.

(2) The State shall develop and manage the national economy in order to achieve prosperity through policies aimed at increasing production, creating an efficient and self-reliant economy and encouraging free market and prohibition of monopoly.

(3) The State shall enhance regional economic integration Environment and Natural Resources 11 **(1)**The people of the Sudan shall have the right to a clean and diverse environment; the State and the citizens have the duty to preserve and promote the country's biodiversity.

(2) The State shall not pursue any policy, or take or permit any action, which may adversely affect the existence of any species of animal or vegetative life, their natural or adopted habitat.

(3) The State shall promote, through legislation, sustainable utilization of natural resources and best practices with respect to their management

GUIDING PRINCIPLES FOR EQUITABLE SHARING OF RESOURCES AND COMMON WEALTH

185 (1) Resources and common wealth of the Sudan shall be shared equitably to enable each level of government to discharge its legal and constitutional responsibilities and duties and to ensure that the quality of life, dignity and living conditions of all citizens are promoted without discrimination on grounds of gender, race, religion, political affiliation, ethnicity, language or region.

(2) The sharing and allocation of the resources and common wealth of the Sudan shall be based on the premise that all parts of the country are entitled to development.

(3) The National Government shall fulfill its obligations to provide financial transfers to the Government of Southern Sudan, and shall, except as otherwise provided herein, apportion revenues equitably among other states;

(4) The State recognizes that Southern Sudan, Southern Kordofan, Blue Nile, Abyei Area and other conflict affected areas face serious needs; they shall be enabled to perform basic government functions, establish civil administration, rehabilitate and reconstruct the social and physical infrastructure in a post-conflict Sudan.

(5) There shall be established a National Reconstruction and Development Fund and a Southern Sudan Reconstruction and Development Fund to bring up Southern Sudan, other conflict affected areas and the least developed areas to the national average level of socio-economic and public services standards.

(6) Revenue sharing shall reflect a commitment to devolution of powers and decentralization of decision-making in regard to development, service delivery and governance.

(7) The development of infrastructure, human resources, sustainable economic growth and the capacity to meet human needs shall be conducted within a framework of transparent and accountable governance. 76

(8) The best known practices in the sustainable utilization and management of natural resources shall be adopted by the State.

(9) This Constitution sets out the various types of income, revenue, taxes and other sources of wealth to which the respective levels of government are entitled.

(10) All taxes and duties set out in this Constitution shall be regulated by law to ensure coordination, fairness, equity, transparency and to avoid excessive tax burden on the citizens, private sector and investors.

(11) No level of government shall withhold any allocation or financial transfers due to any other level of government. In case of dispute, any level of government, after attempting amicable solution, may initiate proceedings in the Constitutional Court and before Southern Sudan Supreme Court in the case of governments in Southern Sudan.,\

LAND RESOURCES

Land Regulation

186 (1) The regulation of land tenure, usage and exercise of rights thereon shall be a concurrent competence, exercised at the appropriate level of government.

(2) Rights in land owned by the Government of the Sudan shall be exercised through the appropriate or designated level of Government.

(3) All levels of government shall institute a process to progressively develop and amend the relevant laws to incorporate customary laws, practices, local heritage and international trends and practices.

3-3 The Environment Protection Act, 2001:

The main legislative innovation in line with the current trend in environmental law in the post-Stockholm era, is the Environment Protection Act,2001. It is an umbrella (framework) law which sets out the general objectives and policy framework in the field of environment and natural resources as well as establishing the basic environment institution being HCENR, determines its composition, functions and lines of linkages with competent bodies.

The environmental objectives are set out in section 4 of the Act as follows:

The competent authorities shall seek to achieve the following objectives through the exercise of their competences or or the drawing of their policies:

- Protection of the environment cleanness, ecological balance and the conservation of the basic components, social and cultural systems with a view of achieving environment safety and sustainable development for all generations,

- Promotion of the environment and the sustainable use of natural resources with a view of developing and conserving the same,
- Establishing the linkage between environment and development issues,
- Emphasizing the responsibility of the competent authority for the protection of the environment and serious endeavor to achieve such protection,
- Capacity building of the competent authority for an effective and efficient role and maximizing performance.

3-3-1 Basic Environment Institution

HCENR is established by section 5 of the Act as a corporate body having separate and independent personality from the national ministry responsible for the environment. The Council is placed under the supervision of the President of the Republic, as its membership include all national ministers responsible for environment and natural resources related functions. Professionals and academics with expertise in the areas of jurisdiction of the council are also appointed by the Council of Ministers as members.

3-3-2 Environment Policy:

One of the prominent innovations in the Act is the mechanism of environment impact assessment (EIA). Section 17 of the Act provides that despite any provision to the contrary in any law in relation to the licensing of projects and programs by the competent authority, any person desirous of establishing any project with probable adverse effects on the environment and natural resources, shall submit an environmental feasibility study executed by by the Evaluation and Monitoring Committee to be convened by the Council.

Such environmental feasibility study of a project shall identify the following:

- The expected environmental impact of the proposed project, -
- Adverse effects of the project which are avoidable upon implementation thereof- -
- Available alternatives for the proposed project, -
- A sufficient explanation that the short term use of environmental and natural - resources does not impede the long term productivity thereof,
- In case of a project connected with the utilization of non-renewable resources, the) - study shall ensure the sustainable use of such resources,
- Precautions adopted for the control of adverse effects of the proposed project.- -

3-3-3 Co-ordination with States in Environment and Natural Resources' Issues:

HCENR as per the Environment Protection Act, 2001 is not only a coordinating mechanism at the national level but also responsible for coordination with the States' level. As the competence in relation to environment protection is among the shared areas of jurisdiction, several States have passed their own environment protection laws and established State mechanism of policy coordination, often named after HCENR. Therefore co-ordination takes place between HCENR and its counterparts in the states with respect to environment policy and the adoption of international obligations.

The concurrency over natural resources and forestry resources between the national and states' authorities resulted in issuing state legislation in the field of forests which contradicts the current national law in the same field. Although the national Forests and Renewable Natural Resources Act, 2002 was issued in line with the division of powers pursuant to the Sudan Constitution, 1998, the national level didn't take the initiative to issue a new law pursuant to the transitional constitution, 2005. The same is true in areas of land tenure, wildlife, range and pasture, tourism, investment, mineral resources ----- etc.

4- Environmental Challenges and Risks

Certain factors appear to have greatly weakened the natural and environmental resources. The following extracts from a report by the Sudanese Environment Conservation Society provide adequate identification of the issues:

- Increase in the population size
- Unsustainable patterns for utilizing lands and natural resources which caused the removal of the vegetation cover and deterioration of the soil.
- Inadequacy of legislation
- Weakness of the executing of policies along with the weakness of the coordination between and within the sectors
- Weakness of awareness and the shortage in the trained cadre and the weakness of the administrative experiences,
- Non availability of technology beside the lack of information.
- The secession of the South of Sudan cut vast areas of forests and water basins in addition the humid lands and a greater part of the biological diversity.
- Most of the remaining parts of Sudan are dry and semi desert areas which require firm environmental administration and new strategy.
- Complexities connected with the management of natural and environmental resources which causes conflicts,
- The contradictions of strategies of the environmental sectoral administrations.
- Absence of public participation and consultation in decisions connected with the management of natural resources.
- Weakness of planning and coordination in the fields of environmental education and training connected with environment.
- Deterioration of soil and loss of lands at the banks of rivers due to floods and mismanagement of water resources,
- Excessive use of chemical materials,
- The widespread of alien species and the weakness of control measures for bio-safety..
- The absence of planning and the administrative policies determining the various land uses for different lands which aim to achieving fair chances and equity.
- Absence of a clear water policy and the problems connected with dams' projects and the reduction in the efficiency of using irrigation water and pollution resulting from agricultural chemicals and the sanitary drainage.
- Deterioration in wildlife reserves and resources necessitates legislative and administrative reform.
- Issues connected with mining, exploring and transporting of oil require improvement in the environmental administration for these important activities, taking into consideration of the rights of coming generations.
- Issues of deterioration of urban environment, the weakness of development of rural areas and the resultant increase of immigration from the rural areas to the towns in addition to the mismanagement in the urban environment.
- Red Sea coast environment hazards are represented by the expansion of development activities without prior studies for specifying the environmental effects and without providing the necessary controls, the increase of the pollution problems caused by oil as well as sea pollution caused by onshore activities.

Examples for development projects of harmful effects are the city named (Heart of the World) to be constructed in Magarsam Island and the power generation station in Arkiag, utilizing coal.

5- Recommendations for Reform:

Based on the above, it is possible to propose reforms in the legal environment and natural law regime for the best accommodation of international obligations as follows:

First: A constitutional reform in relation to the division of powers in the context of the decentralized governance set up. For example the constitutional situation of the environment and natural resources which include forests and other natural resources chief among which are the lands, pastures and the wildlife.

Secondly: Promotion of HCENR into a constitutional commission for the environment and natural resources to be responsible for the initiation of environment related legislations, coordinate the relationships and undertake amicable settlement of the conflicts between the levels of governance, with respect to the environment and natural resources

Thirdly: Revision and reform of the Environment Protection Act, 2001 and substituting the same with a comprehensive framework legislation directed to the sustainable development and provide for effective mechanisms and criteria for pollution control, sustainable development and utilization of natural resources.

Fourthly: More sector legislations in line with international criteria and standards should be passed at the national and States' levels. As an example for such legislations are legislations associated with air and water quality, waste disposal and biological safety in relation to genetic resources.

Fifthly: The legal and institutional reform proposed above should be made in coordination with all the parties, within a process of broad consultation and in harmony with local communities and their needs.